IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7042 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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Versus

OIL & NATURAL GAS CORPORATION LTD.

Appearance:

1. Special Civil Application No. 7042 of 2001

MR IS SUPEHIA for Petitioner No. 1-5

NOTICE SERVED for Respondent No. 1

MR KIRIT J MACWAN for M/S TRIVEDI & GUPTA for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/07/2002

ORAL JUDGEMENT

#. Rule. Mr.Macwan waives service of rule for the respondent - ONGC. With the consent of the parties, the

matter is taken up for final hearing today.

#. The petitioners herein are retired employees of the respondent Corporation. The petitioners have retired from service with effect from 31.3.1995 on reaching the age of superannuation except petitioner No.2. So far as petitioner No.2 is concerned, he retired voluntarily from service. At the time of retirement, petitioners were paid their retiral dues and they were also paid the amount of Rs.1 lakh each by way of gratuity. Subsequently, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Pension & Pensioners' Welfare) issued an Office Memorandum dated 14.7.1995, by which the ceiling limit of gratuity amount of Rs.1 lakh was enhanced to Rs.2.5 lakhs. However, it is provided that the said benefit is to be given in favour of those employees who retired or died on or after 1.4.1995. The aforesaid office memorandum is annexed at page 9 - Annexure-C in the compilation. Accordingly, ceiling limit on the maximum amount of retirement gratuity / death gratuity is raised from Rs.1 lakh to Rs.2.5 lakhs with effect from 1.4.1995 and the benefit of the same is available in favour of those employees who have retired / died on or after 1.4.1995. The respondent Corporation has also issued an office order dated 29.5.1998, by which it is decided to enhance the ceiling limit of gratuity to Rs.2.5 lakhs with retrospective effect from 1.4.1995. The aforesaid office order of the respondent - Corporation is produced along with the affidavit-in-reply and the same is at page 28 Annexure-II. It is provided in the said order that the gratuity, as per the enhanced ceiling, be paid to all eligible cases occurring on or after 1.4.1995. The said office order is in consonance with the memorandum at page 9 issued by the Government of India. Since the present petitioners have retired on 31.3.1995, the said benefit is not made available to them, since, according to the respondent Corporation, the said benefit can be made available only in favour of those employees who have retired on or after 1.4.1995 and not before that.

#. Even though the petitioners have retired in 1995, they have filed this petition in the year 2001 and by filing this petition, it is prayed that, the petitioners should be given the benefit of enhanced rate of gratuity, as it should be presumed that they have retired from service on 1.4.1995 and it cannot be said that they have retired on 31.3.1995. In order to substantiate their say, petitioners have relied upon the judgment given by the Central Administrative Tribunal (Full Bench, Mumbai) (Camp at Nagpur) in Original Application Nos.459 of 1997

and 460 of 1997 decided on 15.10.1999. The said decision relates to the employees of the Postal Department of the Union of India. In the aforesaid decision, the Tribunal found that the Government servant completing the age of superannuation on 31.3.1995 and relinquishing the charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 1.4.1995. Relying upon the aforesaid judgment, the petitioners have approached this Court for necessary direction against the respondent Corporation for giving similar benefit to the present petitioners. Since the aforesaid judgment of the Central Administrative Tribunal, Camp at Nagpur, was given on 15.10.1999, the petitioners have tried to explain the delay by pointing out that after they came to know about the said judgment, ultimately, they have approached this court by way of filing this petition. Accordingly, the claim of the petitioners is based upon the aforesaid ruling of the Full Bench of Central Administrative Tribunal, Mumbai, Camp at Nagpur.

#. It is contended on behalf of the petitioners that, in view of the aforesaid judgment, the respondent-Corporation should give similar benefits to the present petitioners, as, it should be presumed that they have effectively retired from service on 1.4.1995, and, therefore, they are entitled to the revised rate of gratuity as per the office order of the respondent Corporation dated 29.5.1998. On behalf of the petitioners, Mr.Supehia has submitted that, since the petitioners have retired on 31.3.1995, it should be presumed that, they have effectively retired with effect from 1.4.1995, and, therefore, they have retired on or after 1.4.1995. It is argued by Mr.Supehia that, it should be presumed that the petitioners have served upto the mid-night of 31st March,1995 and, therefore, the effective date of their retirement is 1st April, 1995.

#. Reliance is also placed on the Oil & Natural Gas Commission (Travelling Allowance) Regulations, 1970. Regulation 2 deals with the definitions. Regulation 2(d) provides as under.:

> "Day" means, the Calendar day beginning and ending at mid-night but an absence from Headquarters which does not exceed 24 hours, shall be reckoned for all purposes as one day at whatever hours the absence begins or ends."

It is submitted that, a day ends at mid-night, and, therefore, the petitioners were in service upto the

mid-night of 31st March, 1995 and can be treated to have retired after mid-night, i.e. on 1st April, 1995. On behalf of the petitioners, reliance is also placed upon the judgment of this Court reported in 2001 (2) GLH 680.

#. On behalf of the respondent Corporation, it is submitted by Mr.Macwan that, for all practical purposes, the petitioners can be said to have retired by afternoon of 31st March, 1995 and for that purpose, he has relied upon the service regulations, known as "ONGC (Terms and Conditions of Appointment and Service) Regulations 1975", which are incorporated in paragraph 4 of the affidavit-in-reply. It is provided in clause (i) of the said regulation that, every employee shall retire from the afternoon of the last day of the month in which he attains the age of 58 years. Clause (ii) of the said regulation provides that, an employee, whose date of birth is the first of the month, will retire from the service on the afternoon of the last day of the preceding month, on attaining the age of 58 years or 60 years, as the case may be. It is further submitted that, an employee attaining the retirement age of 58 years or 60 years, as the case may be, during the month can be continued till the last day of the month, in which he attains the age of superannuation or completes 58 or 60 years, as the case may be, for the administrative and accounting convenience. A chart, containing the dates of birth as well as the dates on which the petitioners completed 58 years of age, is produced at page 29 Annexure-II, and as per the same, it is clear that the petitioners have completed 58 years of age, which is the age of superannuation either on 2nd March, 1995 or 11th March, 1995 or 17th March, 1995 It is submitted by Mr.Macwan that, it is, therefore, clear that, each of the petitioners has completed 58 years of age during the month of March, 1995 but in order to facilitate the accounting procedure and in order to see that, there is no loss in the retiral benefits, even though they have completed the aforesaid age, for administrative purpose, they were allowed to continue to serve upto 31st March, 1995. He, therefore, submitted that, for all practical purpose, the petitioners have retired on completing the age of 58 years, as stated in the said table, and, therefore, it cannot be said that they have retired on or after 1st April, 1995. It is, therefore, submitted that, since the petitioners have retired prior to 1.4.1995, and since it cannot be said that they have retired on 1st April, 1995, no benefit can be given to the petitioners in any manner. It is, therefore, submitted that, the petition is devoid of merits and the same is required to be dismissed.

#. I have heard the learned advocates of both sides in detail. It is, no doubt, true that the decision of the Central Administrative Tribunal, on which heavy reliance is placed by the petitioners, supports the case of the petitioners in toto. The Tribunal has observed in paragraph 7 of its order as under.:

"According to Rule 83(1) of the Pension Rules,
Pension becomes payable from the date on which Government servant ceases to be born on the establishment (emphasis given). A Government servant continues to be borne on the establishment till midnight of the date of superannuation. The decision of the Hyderabad Bench of this Tribunal in T.Krishna Murthy's case (supra) cannot be brushed aside by the Learned Counsel for the respondents. Retirement may be voluntary or on superannuation. The principles for payment of pension will not vary on the basis of these distinctions. According to us, "afternoon of 31st March" or "forenoon of 1st of April" means one and the same thing and on this basis also we see no reasons to hold that the said case is not applicable to the present cases. In short, we are of the view that, in the present cases the effective date of retirement would be 1.4.1995 and not 31.3.1995."

The question, therefore, which requires consideration is, whether the present petitioners, who are allowed to serve upto 31st March, 1995 even though, admittedly, they have attained the age of 58 years prior to even 31st March, 1995, can be said to have retired on 1st April, 1995, or whether it can be said that they have retired on 31st March, 1995. As observed earlier, the view taken by the Central Administrative Tribunal, Mumbai clearly supports the case of the present petitioners. However, at this stage, reference is also required to be made to the decision of the Apex Court in the case of State Government Pensioners' Association and others Vs. State of Andhra Pradesh, (1986) 3 SCC 501. In the aforesaid case, the Apex Court was concerned with the question of applicability of enhanced gratuity rate from the specific date of retirement. In paragraph 2, the Apex Court has observed as under.:

"We fully concur with the view of the High Court.
The upward revision of gratuity takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly

understood and correctly applied the principle propounded by this Court in Nakara case. There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation - not retrospective operation. In that event (if the specified date line is effaced), it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applied to all those who retired after the commencement of the Constitution on January 26, 1950 and before the date of issuance of the notification on March 26, 1980, the court will have to rewrite the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. Merely striking down (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do. And this, the court cannot do. Besides, giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Article 14. An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing cost of living structure and pay scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and

> closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is therefore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf. For the sake of record we may mention that our attention was called to an order of a Division Bench of the High Court of Gujarat which does not discuss the issues involved but is based on a concession said to have been made by the Advocate General who appeared for the State. And also to a decision of the Allahabad High Court and Punjab and Haryana High Court. In none of these decisions the relevant passage from Nakara case was considered. Nor was the aspect regarding prospective operation considered on principle. The High Court considered it shocking and was carried away by the fact that an employee who retired even one day before the enforcement of the upward revision would not get the benefit if the specified date of enforcement was not effaced by striking down the relevant provision. But in all cases of prospective operation it would be so. Just as one who files a suit even one day after the expiry of limitation would lose his right to sue, one who retires even a day prior to enforcement of the upward revision would not get the benefit. This cannot be helped, there is nothing shocking in it unless one can say legislation can never be made prospective, and nothing turns on it. These are the reasons which impelled us to dismiss the special leave petition on July 18, 1986."

Relying upon the said decision, it is argued by Mr.Macwan that the office memorandum in question also should have prospective effect with effect from 1st April, 1995 and it cannot be applied retrospectively from 31st March, 1995. The said question again arose before the Supreme Court in the case of Union of India Vs. All India

Services Pensioners' Association and another, (1988) 2 SCC 580. In paragraphs 3 and 4, the Supreme Court has observed as under.:

Para 3 :

"The crucial point for consideration in this appeal is whether the members of a service who had retired prior to the date on which there is an upward revision of the gratuity on retirement to the members of such service would also be entitled to claim the difference between the gratuity payable to members of such service on such upward revision and the gratuity which had been actually paid to them on their retirement, even though the government order revising the gratuity does not either expressly or by necessary implication state that the members of the service who had retired earlier should also be paid gratuity at the revised rates because of the decision of this Court in D.S.Nakara v. Union of India. A similar question came up for consideration before this Court in the State Government Pensioners' Association v. State of Andhra Pradesh. The facts of that case are these. The Government of Andhra Pradesh by its order G.O.Ms. No.88 dated March 26, 1980 directed that retirement gratuity was payable to the officers to whom the said government order was applicable as follows :

Retirement gratuity may be one-third of pay drawn at the time of retirement for every six monthly service subject to maximum of 20 months' pay limited to Rs.30,000."

Para 4 :

"The said order was made effective from April 1, 1978. The question which arose for consideration in some writ petitions filed in the High Court of Andhra Pradesh was whether the pensioners who had retired prior to April 1, 1978 would also be entitled to the payment of gratuity in accordance with the provision made in the aforesaid notification. The High Court of Andhra Pradesh held that the decision of this Court in D.S.Nakara case was not applicable to the payment of gratuity and that pensioners who had retired prior to April 1, 1978 would not be entitled to

claim the difference between the gratuity payable under the government order and the gratuity which they had actually received at the time of their retirement. In the special leave petitions filed before this Court against the said decision two of the learned Judges of this Court Thakkar and Ray,JJ affirmed the view taken by the High Court of Andhra Pradesh and dismissed the petitions."

After extracting from the judgment of the Supreme Court in (1986) 3 SCC 501 (supra), which is already quoted in paragraph 7 of this judgment, the Supreme Court observed in paragraph 8, as under.:

"From the foregoing it is clear that this Court has made a distinction between the pension payable on retirement and the gratuity payable on retirement. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement. No other decision of this Court which has taken a view contrary to the decision of Thakkar and Ray, JJ. in the Andhra Pradesh State Government Pensioners' Association case and to the decision in N.L.Abhyankar case has been brought to our notice. The observations made in these two cases are binding on us insofar as the applicability of the rule in D.S.Nakara case to the liability of the government to pay gratuity on retirement. We respectfully agree with the views expressed in those decisions. It is also not shown that the government notification in question either expressly or by necessary implication directs that those who had retired prior to January 1, 1973 would be entitled to any additional amount by way of gratuity. The Tribunal was, therefore, in error in upholding that gratuity was payable in accordance with the Government Notification No.33/12/73-AIS (ii) dated January 24, 1975 to all those members of the All India Services who had retired prior to January 1, 1973."

Mr.Macwan also relied upon the observations made by the Apex court in the case of Indian Ex-Services League and others vs. Union of India, (1991) 2 SCC 104. In the aforesaid case, it has been observed in paragraph 21 as under.:

"One of the prayers made in these writ petitions

> is for grant of same Death-cum-Retirement Gratuity to the pre-April 1, 1979 retirees as to the post-April 1, 1979 retirees. A similar claim was rejected by this Court in State Government Pensioners' Association v. state of A.P. on the ground that the claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on the date of retirement and being already paid on that footing the transaction was completed and closed. It could then not be reopened as a result of the enhancement made at a later date for persons retiring subsequently. This concept of gratuity being different from pension has also been reiterated by the Constitution Bench in Krishena Kumar case. With respect, we are in full agreement with this view. This claim of the petitioners also, therefore, fails."

It is submitted by Mr.Macwan that the present petitioners were entitled to have their gratuity accrued upto their last working day i.e. 31st March, 1995, though such accrued amount of gratuity can be paid within one month, but they are entitled to have that amount only upto the aforesaid date, i.e. upto 31st March, 1995.

#. Considering the matter from the aforesaid angle, I am of the opinion that the present petitioners, for all practical purposes, can be said to have retired from service on and from 31st March, 1995 itself and it cannot be said that they have retired on 1st April, 1995. In fact, completion of their service tenure as well as commencement of their retirement, both take place on the same day, i.e. on 31st March, 1995 simultaneously. In my view, it is not possible to believe that the petitioners can be said to have retired on or after 1st April, 1995, as, it is rightly pointed out by Mr.Macwan that each of the petitioners had, in fact, completed his age of superannuation even prior to 31st March, 1995, but for administrative convenience and for accounting purpose, they were allowed to serve upto the end of the month, which may facilitate the employees to draw their salary for the whole month, but by that, it cannot be presumed that they have retired on 1st April, 1995 simply because they were permitted to serve upto the last date of that month. At this juncture, reference is also required to be made to the Service Regulations of the respondent Corporation, which are already mentioned earlier. The said Regulations clearly provide that, every employee shall retire from the afternoon of the last day of the month, in which he attains the age of 58

years. It also provides that, an employee, whose date of birth is the first of the month, will retire from the service on the afternoon of the last day of the preceding month, on attaining the age of 58 years or 60 years, as the case may be. Considering the aforesaid Service Regulations, it is clear that, an employee is supposed to retire from the afternoon of the last day of the month in which he attains the age of 58 years. The present petitioners have admittedly attained the age of 58 years even prior to 31st March, 1995, as indicated above, as, they have attained the aforesaid age by the middle of the aforesaid month of March, 1995. Therefore, simply because their services were extended upto 31st March, 1995 for administrative purpose, it cannot be said that, they have retired only on or after 1st April, 1995. It is also clear from reading Regulation (ii) that, an employee whose date of birth is the first of the month, can be said to have retired from service on the afternoon of the last day of the preceding month on attaining the age of 58 years or 60 years, as the case may be, meaning thereby that if an employee is reaching the age of 58 years on 1st April, 1995 he can be said to have retired on the previous day, i.e. on 31st March, 1995. This Regulation is not under challenge. In view of this Regulation, therefore, it is not possible to uphold the contention of Mr.Supehia.

#. As pointed out earlier, the petitioners had completed their 58 years of age during the month of March, 1995 itself. In that view of the matter, it can never be said that they had retired only on 1st April, 1995 simply because they were allowed to serve upto 31st March, 1995 for some administrative reasons. Even, apart from that, it is not possible to believe that the petitioners had retired on or after 1st April, 1995 as even assuming that, their services can be said to have continued upto the mid-night of 31st March, 1995, they are entitled to receive by way of gratuity only the amount accrued in their favour upto that very day, and from that very moment, they can be said to have retired from service and it cannot be said that, they have retired on 1st April, 1995. In my view, therefore, all the petitioners had retired from service either on the date of attaining the age of superannuation, or in any case, from the afternoon of the last day of the month in which he attained the age of 58 years i.e. on 31.3.1995 itself. In that view of the matter, the petitioners are not entitled to get the benefit of the aforesaid office memorandum, by which the gratuity rate is enhanced.

##. In my view, the petitioners were in service and had

retired on the aforesaid date, i.e. on 31.3.1995. At this stage, Mr.Supehia has relied upon the judgment delivered by me in the case of Satya Pal Gusain Vs. State of Gujarat, 2001(2) GLH 680. In the aforesaid case, the question, which arose for consideration of the Court, was, whether the department can initiate departmental proceedings against the employee, who had retired from service and whether such departmental inquiry can be initiated by serving the chargesheet upto the mid-night of the last day of his service. Considering the provisions of Bombay Civil Services Rules, 1959, and, more particularly, Rule 9(15) and Rule 189-A (a) and (b), it was held that, a "calender day" means "a day beginning and ending at the mid-night" and the service of chargesheet on the last day of the employment before midnight would mean, initiation of departmental proceedings while the Government servant is in employment. So far as the present case is concerned, in view of the factual background of the case, it is clear that the petitioners had attained their age of superannuation prior to 31st March, 1995 itself coupled with the fact that, in view of the Regulations of the Corporation, as indicated above, they can be said to have retired from the afternoon of the last day of the month on which they attained the age of 58 years. It is further clear that, an employee can be said to have retired either from the afternoon of the last day of the month in which he attained the age of 58 years, or, in the case of an employee, whose date of birth is the first of the month, he can be said to have retired from the service on the afternoon of the last day of the preceding month, on attaining the age of 58 years or 60 years, as the case may be, as indicated in Regulations (i) and (ii) of the Regulations of the Corporation. Even the Regulation of the Corporation is not challenged in this petition.

##. It is not in dispute that moment the employee relinquishes the office, from that very hour, he is entitled to get his retiral dues, including the amount of gratuity. Therefore also, it can be presumed that the employee is retiring on the day on which he is completing the service tenure, and relinquishes the office. Even, if such payment is deferred to a future date, it cannot be said that he has not retired on that very day on which he reaches the age of superannuation.

##. In view of my aforesaid reasoning, I am not in a position to agree with the view taken by the Central Administrative Tribunal, Mumbai (Camp at Nagpur). There is nothing to prevent the Corporation to pay all retiral dues on the very date when the employee relinquishes office and even assuming that he continues upto the

midnight of that day, at that very time, both the things take place simultaneously, i.e., he has served on that day upto the midnight and at that very time, the retirement also comes into play and the retirement cannot be carried further upto the next date. Under these circumstances, I am not in a position to agree with the submission of Mr.Supehia. It is also not possible for me to accept the view of the Central Administrative Tribunal, as, in my view, in any case, the petitioners can be said to have retired either on completing 58 years of age on the relevant day, or, in any case, by 31.3.1995. In view of the clear cut provision in the Regulation of the Corporation, it is not possible for me to believe that, for all practical purposes, the petitioners can be said to have retired on 1.4.1995. It is open for the employer to give gratuity to the employee on the date on which he is relinquishing his office, but for some practical difficulty, if the payment is deferred, it cannot be said that, he did not retire from service on the last day of his service tenure, when he had relinquished his office. In that view of the matter, it is not possible to hold that, a Government servant, completing the age of superannuation on 31st March, 1995 and relinquishing the charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 1.4.1995. There is nothing like "effective retirement". As such, he is retiring on that very day, at the most, from the midnight of 31.3.1995. Even otherwise, both, namely, completion of the service tenure and the commencement of retirement, take place, simultaneously, i.e. performing of duty on the relevant day, i.e., 31.3.1995, as well as retirement also.

##. Under these circumstances, it is not possible for me to come to the conclusion that the petitioners have effectively retired from service with effect from 1.4.1995, and not from 31.3.1995. Considering the matter from the aforesaid angle, and considering the Regulation of the Corporation as well as the fact that the petitioners had attained the age of 58 years, which is the age of superannuation, much prior to 31.3.1995, I see no merit in this petition. Accordingly, the petitioners are not entitled to the benefit of revised gratuity policy.

##. In view of what is stated above, the petition deserves to be dismissed and the same is accordingly dismissed. Rule is discharged with costs, which is quantified at Rs.2000/- (Rupees two thousand only).

(P.B.Majmudar,J)
(pathan)